



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 29, 1994

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR94-525

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27885.

The Texas Department of Criminal Justice (the "department") has received a request for information relating to the "Promotion Board for the position of Captain-Investigator, Job# 029430." Specifically, the requestor seeks "my scores, my ranking and a copy of the score sheets PERS-11.04.03-6 on which each Board Member rated me as well as a copy of the questions and the correct answers to the questions of that Board." You claim that the department may withhold the requested information under subchapter C of the Open Records Act.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

The department received the open records request on October 26, 1993. You requested a decision of this office on July 28, 1994. On the basis of these facts, we conclude that the department failed to request a decision within the ten day period section 552.301(a) of the Government Code mandates.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381. Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, *i.e.*, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You seek to withhold the requested information under section 552.122 of the Government Code, but have not explained how the requested information is made confidential by law or implicates third party interests. We conclude, therefore, that the department must immediately make the requested information available to the requestor in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 27885

cc: Mr. Julian G. Campos  
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